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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,469	12/30/2003	John C. Montagna	D0447-43US	7063
54380 7590 05/05/2009 FLASTER/GREENBERG P.C. 8 PENN CENTER 1628 JOHN F. KENNEDY BLVD. 15TH FLOOR PHILADELPHIA, PA 19103				
EXAMINER				
FISCHER, JUSTIN R				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/748,469

Applicant(s)

MONTAGNA ET AL.

Examiner

Justin R. Fischer

Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 20, 21, 24 and 26-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 20, 21, 24 and 26-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 20-21, 24, 26, 27, 29, 31, and 32 are stand rejected under 35 U.S.C. 102(e) as being anticipated by Myers (US 6857683, of record).

With respect to claim 1, Myers teaches a method of manufacturing a thermoformable (column 3, lines 48-58) composite panel by forming a first lower panel 30 having a peripheral lip and a plurality of raised projections 32, wherein each projection defines a coplanar surface, forming a second upper panel 28 having a substantially planar surface and a peripheral lip, wherein the peripheral lip of the first panel is configured to fit snugly against and within the peripheral lip of the second panel (Figure 4), applying an adhesive to coplanar surfaces of the first panel (column 3, lines 59-64), joining the peripheral lip of the first panel and the peripheral lip of the second panel (column 4, lines 51-53), and securing the second panel to the first panel such that the coplanar surfaces are adhered to the upper panel and the peripheral lips remain in substantial proximity to form the composite panel (Figure 4).

As to claim 26, all the limitations were addressed above with respect to claims 1 and 20-21 but applying adhesive to the peripheral lips and the composite panel being a tonneau cover. The reference teaches applying adhesive to the peripheral lips (column

4, lines 51-53; column 3, lines 62-64). The reference also teaches the composite panel being a tonneau cover (column 1, lines 11-12).

Regarding claims 2, 4, 20, 21, 27, 29, 31, and 32, the reference teaches such (see Figure 3).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greve et al. (US 5273606, of record) in view of Myers et al. (US 6857683, of record).

With respect to claim 1, Greve teaches a method of manufacturing a thermoformable (column 1, lines 18-19) composite panel, that can used as a variety of parts in a vehicle (column 1, lines 13-14; column 2, lines 60-63), by forming a first lower panel 12 having a peripheral lip and a plurality of raised projections/ribs, forming a second upper panel 14 having a substantially planar surface and a peripheral lip 18, wherein the peripheral lip of the first panel is configured to fit snugly against and within the peripheral lip of the second panel, joining the peripheral lip of the first panel and the peripheral lip of the second panel, and securing the second panel to the first panel such that the peripheral lips remain in substantial proximity to form the composite panel (Figures 1 and 3; column 1, lines 13-22; column 2, lines 56-63; column 3, lines 10-17).

It is unclear as to whether Greve teaches each of the projections/ribs applying an adhesive to the coplanar surfaces of the first panel and the coplanar surfaces being adhered to the upper panel.

It is known in the art to make a composite panel, which can be used as a variety of parts in a vehicle, by securing a lower panel having raised projections/ribs to an upper panel using adhesive (in addition to adhesively joining the peripheral lips of the panels) as taught by Myers. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to apply adhesive to the surfaces of the raised portions such that they are adhered to the upper panel because such is known in the art, as taught by Myers, where this additional adhesive bonding between the lower and upper panels would help prevent delamination.

Regarding claims 2 and 24, the reference teaches such.

As to claims 3 and 4, a fair reading of Greve does not suggest the exclusive use of raised portions having a rectangular shape- one of ordinary skill in the art at the time of the invention would have readily appreciated the use of a wide variety of geometries that are commonly used in similar panels and applicant has not provided a conclusive showing of unexpected results to establish a criticality for the claimed geometries. It is further emphasized that Greve does not place a criticality on the geometry of the raised surface portions.

5. Claims 20-21, 26, 27, 31, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greve et al. and Myers as applied to claim 1 above, and further in view of Corder et al. (US 6568495, of record).

Regarding claims 20-21, it is noted that Greve teaches the reinforced composite panel being used for a variety of vehicle body parts, such as a door or lift gate (column 1, lines 13-14; column 2, lines 60-63). It is known in the art to use the same reinforced composite panel for a variety of moveable vehicle body parts, including a trunk or deck lid (equivalent to a lift gate), as taught by Corder (column 1, lines 48-51), and therefore it would have been obvious to also use the panel of Greve for a tonneau cover.

As to claim 26, all the limitations were addressed above with respect to claims 1 and 20-21 but applying adhesive to the peripheral lips. Greve teaches such (column 3, lines 10-16).

As to claims 27 and 31-32, these limitations were addressed above with respect to claims 2, 21 and 24.

6. Claims 1-3, 5, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seksaria (US 5124191, previously cited) in view of Myers et al. and Greve et al.

With respect to claim 1, Seksaria teaches a method of manufacturing a thermoformable (column 1, lines 35-36 and 43-46) composite panel, that can used as a variety of parts in a vehicle (column 1, lines 5-10), by forming a first lower panel 14 having a plurality of raised projections, wherein each projection defines a coplanar surface, forming a second upper panel 12 having a substantially planar surface, applying adhesive 19 to at least the coplanar surfaces of the first panel, and securing the second upper panel to the first lower panel such that coplanar surfaces are adhered to the upper panel (Figures 1-4; column 3, lines 37-52; column 3, line 60 – column 4, line 5).

It is unclear as to whether Seksaria teaches the first and second panels having peripheral lips, wherein the peripheral lip of the first panel is configured to fit snugly against and within the peripheral lip of the second panel, joining the peripheral lips, and securing the second panel to the first panel such that the peripheral lips remain in substantial proximity.

It is known in the composite panel art, as it relates to a reinforced panel that can be used as a variety of parts in a vehicle, for both the lower and upper panels to have peripheral lips, wherein the peripheral lip of the first panel is configured to fit snugly against and within the peripheral lip of the second panel, to join the peripheral lips, and to secure the second panel to the first panel such that the peripheral lips remain in substantial proximity, as taught by Myers and/or Greve. Therefore, it would have been obvious use first and second panels having peripheral lips for that of Seksaria, wherein the peripheral lip of the first panel is configured to fit snugly against and within the peripheral lip of the second panel, to join the peripheral lips, and to secure the second panel to the first panel such that the peripheral lips remain in substantial proximity because such is known in the art, as taught by Myers and/or Greve, where this configuration eliminates any jagged edges and makes the composite panel easier to install.

Lastly, with respect to the independent claim, Figure 3 clearly depicts a construction in which a plurality of coplanar raised surfaces is adhesively bonded to an upper panel 12. It is emphasized that the raised surfaces are coplanar despite the fact an irregular cup shaped element is provided to accommodate air cleaner 20. One of

ordinary skill in the art at the time of the invention would have readily appreciated a wide variety of embodiments in which the plurality of raised surfaces is coplanar (a function of the specific intrusions defined by under-hood components).

Regarding claims 2 and 3, Seksaria teaches such (Figure 4; column 4, lines 15-18).

Regarding claim 5, Seksaria teaches second elongate projections having tapered sides extending from the lower panel and having a uniform height less than that of the plurality of raised projections (Figure 2 – four projections contacting upper panel on left side of composite panel have uniform height and are shorter than two projections contacting upper panel on right side of composite panel – also see Figures 1 and 4; column 2, lines 20-32; column 4, lines 5-9).

Regarding claim 24, Seksaria in view of Fujimoto and/or Myers and/or Greve teaches such.

7. Claims 20-21, 26-28 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seksaria and Myers and/or Greve as applied to claim 1 above, and further in view of Corder et al.

Regarding claims 20-21, it is noted that Seksaria teaches the reinforced composite panel being used for a variety of vehicle body parts, such as a hood (column 1, 5-10). It is known in the art to use the same reinforced composite panel for both the hood and tonneau cover of a vehicle, as taught by Corder (column 1, lines 48-51), and therefore it would have been obvious to use the panel of Seksaria for a tonneau cover as an alternative to using it as a hood.

As to claim 26, all the limitations were addressed above with respect to claims 1 and 20-21 but applying adhesive to the peripheral lips. Seksaria in view of Myers and/or Greve teaches such.

As to claims 27-28 and 30-32, these limitations were addressed above with respect to claims 2-3, 5, 21 and 24.

Response to Arguments

8. Applicant's arguments filed January 30, 2009 have been fully considered but they are not persuasive.

Applicant argues that the truck bed cover of Myers is rounded and thus, the recessed portions are necessarily situated in different planes in space. Applicant further argues that the language "may be rounded" is directed to a prior art assembly.

A fair reading of Myers suggests that a rounded or curved assembly represents a preferred embodiment and it is well taken that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments (MPEP 2123). In this case, Myers clearly recognizes the ability to form a non-curved cover (disclosure by Myers is not restricted to prior art assembly) and while such a design does not constitute a preferred embodiment, it is within the purview of one of ordinary skill in the art given the general disclosure of Myers.

Applicant further contends that none of the embodiments of Myers show coplanar convolutions or X-type supports as defined in the application.

First, it is unclear how the term "convolutions" defines over the structure of Myers. Second, Figure 3 depicts an arrangement comprising "X" type supports (Column 2, Lines 35+). It appears that the X-type supports are formed by a plurality of triangular raised surfaces 32. It is emphasized that applicant has not provided sufficient evidence or arguments to suggest that Myers does not satisfy the claimed arrangement.

Regarding Greve, applicant argues that the panel is not configured so that the lips of the panels are configured to fit snugly against and within the peripheral lip of the second panel. The examiner respectfully disagrees. In particular, the end section of panel 12 can be viewed as a "peripheral lip" and the curved portion of panel 10 can be viewed as a "peripheral lip" and Figure 4 clearly depicts an arrangement in which the peripheral lip of panel 12 is inserted within the peripheral lip (entirety of curved portion) of panel 10. It is emphasized that the term "peripheral lip" is not defined in a manner that excludes viewing the end sections of said panels as such.

With respect to Corder, the reference is simply provided to evidence the use of panels in a wide variety of applications, including trunks and deck lids/lift gates. It is emphasized that the panels of Greve are commonly referenced as being suitable for a wide variety of applications (disclosure of Greve is not limited to a single application and one of ordinary skill in the art at the time of the invention would have found it obvious to use such a panel in the manufacture of a variety of components).

In regards to the Myers-Greve combination, Myers recognizes the use of adhesives in bonding upper and lower panels having raised projections or ribs. Given the general structure of Greve (upper and lower panels having raised projections or

ribs), one of ordinary skill in the art at the time of the invention would have been amply motivated to include an adhesive to provided added adhesion and ultimately reduce delamination. It is unclear how the respective references are not combinable since they are similarly directed to vehicle parts comprising upper and lower panels having raised projections or ribs. Also, as detailed above, the disclosure of a curved surface in Myers represents a preferred embodiment and one of ordinary skill in the art at the time of the invention would have found it obvious to manufacture a "non preferred" assembly.

Regarding Seksaria, applicant contends that the cup shaped elements are not coplanar and have horizontal surfaces that terminate in different planes relative to one another. As set forth in the previous communication, Figure 3 depicts an assembly in which the raised surface portions are coplanar and adhered via adhesive 19 (applicant has not directly challenged the examiner's position). Also, it is emphasized that the plane of the raised surfaces is a direct function of the geometry or arrangement of the under-hood components and the reference is broadly directed to embodiments having varied amounts of such components. Thus, one of ordinary skill in the art at the time of the invention would have found it obvious to form a structure in which the raised surfaces are coplanar.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Justin R. Fischer** whose telephone number is **(571) 272-1215**. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Justin Fischer
/Justin R Fischer/
Primary Examiner, Art Unit 1791
April 29, 2009